

Our Ref: 0160/11lt2

14 February 2014

Marian Pate
NSW Department of Planning and Infrastructure
PO Box 39
SYDNEY 2001

Dear Marian,

**RE: SUTHERLAND DRAFT LEP REVIEW
21 ILMA AVENUE, KANGAROO POINT**

We advise that we act on behalf of the owner of the above property and have been instructed to make a submission to be included as part of the independent review of the Draft Sutherland Shire LEP 2013. In accordance with the terms of reference set out by the Minister for Planning and Infrastructure, this submission relates to a site that was included in Mayoral Minute No. 6/13-14 dated 29 July 2013.

As conveyed to the Panel during recent Public Hearing sessions, it is critical that a distinction is made between matters referred to in the Mayoral Minute of 29 July 2013 as to whether they were matters supported by Council's professional staff following submissions made on the initial public exhibition period or were changes instigated by the Mayor. We note that in relation to this submission, the Mayoral Minute was consistent with the recommendations of staff contained in their report relating to the first round of exhibition.

By way of background, Planning Ingenuity made a submission to Council to correct an error with the electronic mapping of the foreshore building line under the Draft SSLEP 2013.

Staff was supportive of our request and made the following recommendation:

" *Corrections to the cadastre have been carried out as a result of this submission and it is recommended that the Foreshore Building Line be replotted in this location. The replotting is expected to result in a very minor change to the exhibited plan. It is considered that this drafting anomaly therefore does not require re-exhibition.*"

As discussed, the subject site was mentioned in the Mayoral Minute as follows:

" *v. Foreshore Building Line and Foreshore Area as indicated on the Foreshore Building Line Map be amended in relation to the:*
- corrected cadastre for properties along Grays Point Road, Grays Point;
- corrected cadastre at Ilma Ave, Kangaroo Point (DP 8822)"

The changes to the Draft LEP, as exhibited in the second round, were therefore made as a result of thorough analysis and the request by Planning Ingenuity in their submission on behalf of the land owner. The request was considered by professional Council staff and was supported. The site was included in the Mayoral Minute to reinforce the views of staff.

It is therefore abundantly clear that the changes to the LEP in relation to the subject site are both appropriate and are agreed as acceptable by Planning Ingenuity, professional staff and the Mayoral Minute.

We therefore request that the panel endorse the Mayoral Minute as it relates to the subject site, that is, amend the location of the foreshore building line as requested.

Should you wish to discuss any of the above, please feel free to contact the undersigned.

Yours faithfully,
Planning Ingenuity Pty Ltd

A handwritten signature in black ink, appearing to read 'J. Mead'.

Jeff Mead
DIRECTOR



ANNEXURE A

COPY OF INITIAL SUBMISSION ON DRAFT SUTHERLAND LEP 2013

Our Ref: 0160/11lt1
Council Ref: LP/03/252376

1 May 2013

General Manager
Sutherland Shire Council
Locked Bag 17
SUTHERLAND NSW 1499

Attention: Environmental Planning Unit,

**SUBMISSION ON THE DRAFT SUTHERLAND SHIRE LEP 2013
No. 21 ILMA AVENUE, KANGAROO POINT**

We refer to the *Draft Sutherland Shire LEP (DSSLEP) 2013* which is on exhibition from 19 March to 1 May, 2013. We act on behalf of the owner of the subject site and have been instructed to make a submission in relation to the Draft LEP and discrepancy of the Foreshore Building Line (FBL) location.

We understand that it is Council's intent to simplify the foreshore controls under DSSLEP 2013 by providing a foreshore building line as marked on a map. However, as stated in the *Foreshore Building Line Fact Sheet*, the location of the FBL under DSSLEP 2013 is identified as if it was determined by survey utilising the definition of the FBL under SSLEP 2006. As such, the location of the FBL under DSSLEP 2013 relies on a setback from the *deemed mean high water mark* under SSLEP 2006 (mean high water mark as at 24 April 1980).

We have acquired the electronic file from Council which locates the mapped MHWM and FBL under the Draft LEP for the subject site. However, the location of the MHWM and FBL differs significantly between Council's electronic file and the actual surveyed location on site. In this regard, attached is a plan prepared by Cooper Richards Surveyors which overlays Council's electronic file ('red' line on the plan) and the surveyed location of the MHWM and FBL.

The plan indicates that:

- The location of Council's electronic MHWM is predominantly further towards the waterway in comparison to the surveyed location of MHWM;
- The surveyed location of the 20m FBL indicates a consistent 20m setback from the DP registered location of MHWM (measured in consistent 20m arcs), whereas there are large variations between the setback of Council's electronic MHWM and 20m FBL. In actual fact, Council's electronic file measures a 22m FBL at its greatest extent, which represents a significant discrepancy of approximately 2m or 10% of the required FBL setback;
- Despite Council's mapped location of the MHWM, the proportion of the existing building (including swimming pool and deck) that sits below the 20m FBL varies between the mapped and surveyed locations and results in a greater extent of encroaching building works; and
- In comparing the Draft LEP mapped and surveyed location of the MHWM and FBL, the location of the southern and street property boundaries varies and is inconsistent.

The built form impacts arising out of the FBL location is significant as it determines the extent of existing building works that encroach into the FBL zone and also has wider reaching implications across the Shire for similar waterfront sites.

We commend Council's approach in the Draft LEP in relation to mapping of the FBL, thereby removing the existing convoluted foreshore controls that are prescribed under SSLEP 2006. However, our concern is (for the subject site and numerous other waterfront sites in the Shire), that inaccurate electronic mapping of the FBL under the Draft LEP will lead to disputes as to the actual location of the FBL as it relates to the surveyed location of the MHWM.

In light of the above, it is requested that the DSSLEP 2013 Foreshore Building Line map for the subject site be amended to reflect a 20m setback from the correct MHWM and taking into account correct boundary locations.

In addition, to avoid disputes as to the actual location of the FBL we suggest that a reasonable approach is to extend the provisions of Clause 4.6 *Exceptions to Development Standards* to Clause 6.2 relating to foreshore building lines. In doing so, Council will provide flexibility in the application of the Clause to ensure that discrepancies in the FBL location can be appropriately handled by Council staff during the assessment of development applications.

Should flexibility not be inbuilt to the application of the FBL, even if Council staff agree that the surveyed location of MHWM and the FBL is accurate, the current wording of the FBL clause does not allow for flexibility in decision making. Given the substantial implications that this would have on the potential for redevelopment on waterfront sites, it is likely that Council would need to consider numerous LEP amendments to achieve accurate FBL location.

We thank you for the opportunity to comment on Council's Draft LEP and trust that this submission is self explanatory, however, should you require any further clarification, please do not hesitate to contact our office.

Yours faithfully,
Planning Ingenuity Pty Ltd

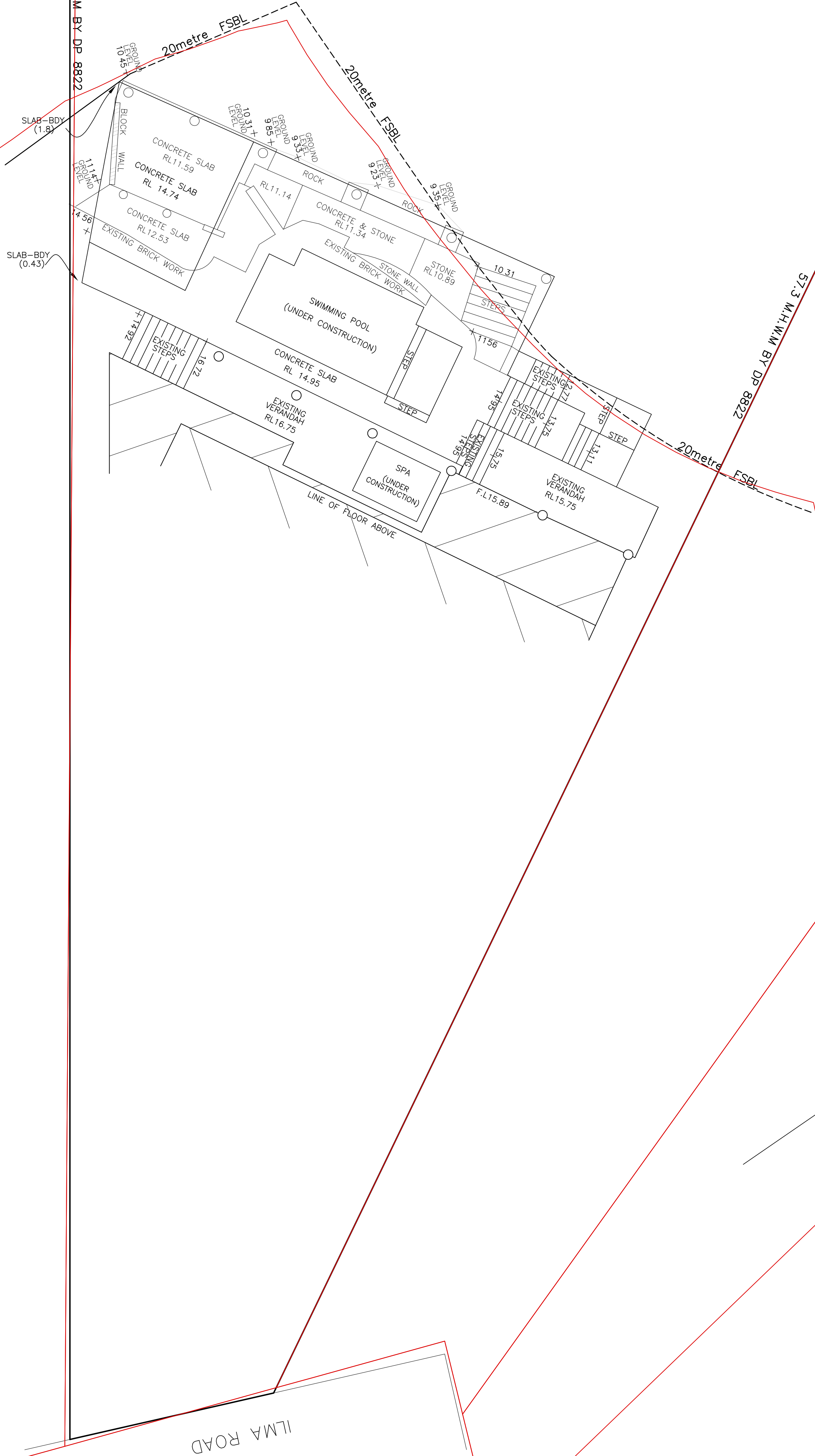


Jeff Mead
DIRECTOR

LOT 211
DP 632932

LOT 20
DP 8822

LOT 19
DP 8822



- ### NOTES
1. THE TITLE BOUNDARIES SHOWN HEREON HAVE BEEN LOCATED BY PLAN DIMENSIONS ONLY FROM D.P. 8822.
 2. RELATIONSHIP OF IMPROVEMENTS AND DETAIL TO BOUNDARIES IS DIAGRAMATIC EXCEPT WHERE SHOWN.
 3. NO SERVICES HAVE BEEN LOCATED.
 4. THE LEVEL DATUM OF THE SURVEY IS A.M.D. WITH THE ORIGIN OF LEVELS BEING THE MEAN HIGH WATER MARK BY DP 8822.
 5. THE DATA CONTAINED IN THIS CAD DRAWING AND TILE HAS BEEN OBTAINED BY STANDARD TECHNIQUES FOR DETAIL AND TOPOGRAPHIC SURVEYS. THE DATA IS FOR ILLUSTRATIVE PURPOSES AND IS NOT TO BE MEASURED WITHIN THE MODEL FOR STRUCTURAL PURPOSES OR CRITICAL DESIGN.
 6. THE POSITION OF THE FSBL HAS BEEN DERIVED FROM THE LOCATION OF THE M.H.W.M AS SHOWN ON DP8822.

LEGEND

RL FLOOR LEVEL

A1 SHEET



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ISSUE

AMENDMENT

DRAWN DATE

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INTERCASH PTY LTD

No. 21 ILMA ROAD, KANGAROO POINT.
LOT 20 DP 8822
PART DETAIL AND LEVEL

SCALE: 1:100

DATUM: A.M.D.

DATE: 25/11/11

FILE: 2111251/1
SURVEY/MCTV/ISSUE
DRAWN: MC
CHECKED: SG
DRAWING No.
2111251.2
SHEET 1 OF 1